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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRIAN P. GIFFIN

Appeal 2009-001898
Application 10/629,094
Technology Center 3600

Decided: May 21, 2010

Before LINDA E. HORNER, STEFAN STAIKOVICI, and KEN B.
BARRETT, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Brian P. Giffin (Appellant) seeks our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 9-13 and 15. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

THE INVENTION

Appellant's claimed invention pertains to controlling a conveyance device to transfer objects from one conveyor to another. Spec. 2, para. [001]. Claim 9, reproduced below, is representative of the subject matter on appeal.

9. A method of transferring blanks in a conveyance mechanism, the method comprising:

- dispensing a plurality of blanks from a feeder into a first conveyor, the blanks being dispensed into the first conveyor adjacent to one another in the direction of the travel of said first conveyor;

- advancing the plurality of blanks by said first conveyor toward a second conveyor at a first velocity, said second conveyor traveling at a second velocity and said second velocity being greater than said first velocity;

- detecting the position of a given blank of said plurality of blanks in said first conveyor as said given blank approaches said second conveyor;

- accelerating the first conveyor from the first velocity to substantially match the second velocity in response to detecting the position of said given blank;

- transferring said given blank from the first conveyor to the second conveyor after said accelerating step;

- decelerating the first conveyor to the first velocity after said accelerating step and in response to detecting the position of said given blank so that said given blank and a subsequent blank in said first conveyor immediately adjacent to said given blank travel at different velocities after said transferring step; and

- repeating said detecting, accelerating, transferring and decelerating steps for each said subsequent blank.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

| | | |
|---------------|--------------|---------------|
| Delsanto | US 5,038,915 | Aug. 13, 1991 |
| Long | US 5,129,641 | July 14, 1992 |
| Cordia et al. | US 5,341,915 | Aug. 30, 1994 |

The following Examiner's rejections are before us for review:

1. Claims 9-12 are rejected under 35 U.S.C. § 102(b) as being anticipated by Cordia;
2. Claim 15 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Long and Cordia; and
3. Claim 13 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Long, Cordia, and Delsanto.

ISSUE

The Examiner found that Cordia discloses a "first conveyor" comprising two phasing conveyors 22, 25 and two transfer conveyors 23, 26, and that "this [first] conveyor is accelerated in sections to accelerate articles to match the speed of the second conveyor formed by the target conveyor 11." Ans. 8. Appellant contends that Cordia fails to disclose a first conveyor accelerated to substantially match the velocity of the second conveyor. *See* App. Br. 7. In particular, Appellant asserts that Cordia's transfer conveyors 23, 26 operate at a constant velocity and that the phasing conveyors are not accelerated to a velocity matching that of the target conveyor. App. Br. 7; Reply Br. 6, 8. Therefore, the issue is whether

Cordia discloses accelerating the first conveyor to substantially match the velocity of the second conveyor.

FINDINGS OF FACT

We find that the following findings are supported by at least a preponderance of the evidence.

Cordia discloses a phasing conveyor system 10 comprising two combination phasing/transfer conveyors 20, 21. Cordia, col. 7, ll. 58-59; col. 8, ll. 38-41; figs. 1, 2. The combination phasing/transfer conveyors 20, 21 each are comprised of a phasing conveyor (elements 25 and 22, respectively) and a transfer conveyor (26 and 23, respectively). *Id.*, col. 8, ll. 47-59; fig. 2. The phasing conveyors are variable speed drive, and accelerate or decelerate as necessary to correct the position of the article so as to properly phase the article. *See id.*, col. 4, ll. 40-55. Each transfer conveyor, which is located downstream of the respective phasing conveyor, operates at a substantially constant speed that is faster than the phasing conveyor speed, thereby accelerating the article. *Id.*, col. 4, ll. 56-60. The transfer conveyor speed is the same as that of the target conveyor. *Id.*, col. 9, ll. 8-10.

ANALYSIS

Claims 9-12 are rejected under 35 U.S.C. § 102(b) as being anticipated by Cordia

In Cordia's system, the acceleration of the article to the target conveyor velocity occurs during the transfer of the article from the variable speed phasing conveyor to the faster, substantially constant speed transfer conveyor. *See Findings of Fact.* However, claim 9 requires the step of

accelerating the first conveyor – not merely the article – to match the second velocity, which is the velocity of the second conveyor (found to be Cordia’s target conveyor). The Examiner does not direct our attention to any disclosure in Cordia of accelerating the phasing conveyors to match the target conveyor speed. As mentioned above, the transfer conveyors are traveling at a substantially constant speed. Therefore, it does not appear that any of Cordia’s conveyors are accelerated to match the second velocity. Accordingly, we cannot sustain the rejection of claim 9 and its dependent claims 10-12 as anticipated by Cordia.

Claim 15 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Long and Cordia

Method claim 15 depends from independent claim 9 and recites, *inter alia*, that the second conveyor includes upper and lower belt members. The Examiner found that Long discloses a servomotor-driven feeder conveyor 18b including upper and lower belts, and that the servomotor “is *capable* of acceleration from a first velocity to a second velocity” Ans. 4-5 (emphasis added). It does not appear that the Examiner found that Long discloses the step of accelerating a first conveyor from a first velocity to substantially match the second velocity of a second conveyor, as required by parent claim 9. *See* Ans. 5. Rather, the Examiner relies on Cordia and found that that reference shows a controller and a servo motor “which increases the speed of the feeder conveyor from a first velocity to a second velocity matching the speed of a feeder conveyor 11” Ans. 5. For the reasons discussed above, we cannot find that Cordia discloses the recited step of accelerating the first conveyor to substantially match the second velocity. Additionally, the Examiner’s articulated reason to combine the

references is premised on this erroneous finding. *See* Ans. 5-6. As such, we do not sustain the rejection of claim 15 as obvious over Long and Cordia.

Claim 13 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Long, Cordia, and Delsanto

Method claim 13 depends indirectly from claim 9. The Examiner does not rely on Long or Delsanto in any manner that cures the deficiency of the underlying anticipation rejection of claim 9. *See* Ans. 6, 11. As such, we also reverse the rejection of claim 13.

CONCLUSION

Cordia does not disclose accelerating the first conveyor to substantially match the velocity of the second conveyor.

DECISION

The decision of the Examiner to reject claims 9-13 and 15 is reversed.

REVERSED

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